

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

United States Court of Appeals  
Fifth Circuit

**FILED**

November 10, 2008

Charles R. Fulbruge III  
Clerk

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No. 07-51193  
Summary Calendar

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UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

JOSE JIMENEZ-HERRERA

Defendant-Appellant

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 2:07-CR-160-ALL

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Before SMITH, STEWART, and SOUTHWICK, Circuit Judges.

PER CURIAM:\*

Jose Jimenez-Herrera pled guilty to illegal reentry after deportation. He was sentenced to 18 months of imprisonment, to be followed by three years of supervised release. On appeal, Jimenez-Herrera argues only that his prior state conviction of possession of a controlled substance did not constitute an aggravated felony. See U.S.S.G. § 2L1.2(b)(1)(C).

We do not reach the merits of the issue that he presents. Because Jimenez-Herrera has prior to this date been released from federal custody and

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

removed from the United States, he is subject only to an undischarged term of supervised release. We cannot grant what he requests because resentencing would require him to be present at a hearing to consider a new sentence; his deportation creates a legal bar to such an appearance. *United States v. Rosenbaum-Alanis*, 483 F.3d 381, 383 (5th Cir. 2007). This appeal has therefore become moot.

The appeal is DISMISSED.